IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15575 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRIMALI (GARODA) KANKUBEN HEMCHANDBHAI

Versus

DEPUTY COLLECTOR,PALANPUR

Appearance:

1. Special Civil Application No. 15575 of 2004

MR BN PATEL for Petitioner No. 1-6

Mr. KP Raval, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/01/2005

ORAL JUDGEMENT

In this matter, Notice is issued for final disposal and therefore the matter is taken up for Final Hearing today. Rule.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the

Deputy Collector, Palanpur, dated 5.12.2003 and also the judgment and order passed by the revisional authority-respondent No.2 dated 19.9.2004 by which in exercise of powers of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 {"the Tenancy Act" for short} the management of the land in question is assumed by the respondents on the ground that the land in question is not cultivated by the petitoners and kept fallow for more than 2 years.

3. The petitioners are owners of land bearing Survey No. 15 admeasuring 8 acres and 6 gunthas situate at Village Thalvada, Taluka-Vadgam. As it was found by the Deputy Collector that the land was kept fallow i.e.,Padtar for the period between 1982-83 and 1989-90 proceedings were initiated under Section 65 of the Tenancy Act and the petitioners were served with show cause notice dated 2.11.2002. On receipt of the show cause notice the petitioners appeared before the authority and had submitted that though the petitioners had tried to cultivate the land for the period between 1982-83 to 1989-90 due to insufficient rain there was no sufficient crop and therefore the Talati-cum-Mantri has shown the land as Padtar in the Village Form No. 7/12. Considering the Village Form No. 7/12 for the aforesaid period and considering the fact that the land is kept Padtar/fallow for the period between 1982-83 and 1989-90 the Deputy Collector passed the order exercising powers under Sec. 65 of the Act for taking management of the land in question for 10 years and directing the Mamlatdar, Viramgam to take possession of the land in question. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Palanpur dated 5.12.2003 passed under Section 65 of the Act taking the management of the land in question under the State Government for a period of 10 years, the petitioners preferred an appeal being Appeal No. 1 of 2004 before the Collector, Banaskantha, which came to be dismissed by the Collector by his order dated 19th September 2004 on the ground that appeal before the Collector is not maintainable against the order passed by the Deputy Collector under Section 65 of the Tenancy Act.
Under the circumstances, being aggrieved and dissatisfied with the original order dated 5th December 2003 passed by the Deputy Collector, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri BN Patel, ld. advocate appearing on behalf of the petitioners has submitted that the order passed by the Deputy Collector is bad in law and while passing the

order the authority has not ocnsidered the scope and ambit of Section 65 of the Act. It is further submitted that merely because the lands are kept uncultivated and/or Padtar that itself will not give any power and/or jurisdiction to the authority to pass an order of taking over management of the land in question upto 10 years. He has further submitted that in view of the fact that due to shortfall of rain it was not possible to get maximum crop and though they had tried to cultivate they could not reap the crops and therefore Padtar is shown in the Village Form No. 7/12 by the Talati-cum-Mantri. He has further submitted that there was valid reason for not properly cultivating the land more particularly due to shortfall of rain in the area for the aforesaid years. He has further submitted that under the circumstances ocnsidering the facts and circumstances the order passed by the Deputy Collector in taking over the management (maximum) is not warranted at all. He has further submitted that there is no specific finding on evidence and considering the replies submitted by the petitioner to the effect that non-cultivation of the land in question was within the control of the petitioners. He has also further submitted that in fact after 1992-93 since last more than 12 years in fact the land is fully cultivated and it is not kept Padtar and therefore when the show cause notice was given for the years between 1982-83 and 1989-90 in the year 2002, the authority ought to have considered the aforesaid aspect also. Shri Patel has relied upon the judgment and order passed by this Court [Coram: M.R. Shah, J.] dated 5.8.2004 in Special Civil Application No. 2163 of 2004 in the case of Vijaybhai Manubhai Thakkar Vs. State of Gujarat, in support of his aforesaid submission.

5. Shri KP Raval, learned AGP appearing for the State has supported the order passed by the Deputy Collector. He has submitted that on the basis of the Village Form No. 7/12 as it was found by the authority that the land in question is not cultivated and is kept Padtar the Deputy Collector was justified in passing the order of taking over its management for a period of 10 years considering the facts of the case. He has also further submitted that there is a finding given by the Deputy Collector to the effect that the land was kept uncultivated and/or Padtar and not for the reasons beyond the control of the petitioners. He has further submitted that as it was found that there is breach of Section 65 of the Act the authority is justified in passing the impugned order and therefore requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the parties.

7. Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 reads as under;

"S.65. Assumption of management of lands which remained uncultivated.__

(1) If it appears to the [State] Government that for any two consecutive years, any land has remained uncultivated (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the [State] Government may, after making such inquiry as in thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of management, such land shall vest in the [State] Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land :

[Provided that the manager may in suitable cases give such land on lease as rent even equal to the amount of its assessment;

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed.]"

In the present case, from the bare reading of the impugned order it is found that except the bare observation that the land is kept uncultivated not due to reasons beyond control of the petitioner, there is nothing further in the said order and only on the basis of the entry in the Village Form No. 7/12 for the aforesaid years, the aforesaid finding and/or observation is made by the Deputy Collector. Nothing is on record to show that the explanation given by the petitioners for not fully cultivating the land due to shortfall of rain has been considered or not. In fact, there is nothing in

the order by which it can be said that the Deputy Collector has considered the aforesaid fact. Under the circumstances and reasoning given by this Court in order dated 5.8.2004 passed in Special Civil Application No. 2163 of 2004 in the case of Vijaybhai Manubhai Thakkar (supra), the present petition is required to be allowed and the matter is required to be remanded to the Deputy Collector, Palanpur for passing an order afresh in accordance with law and on merits and to give a specific finding considering the scope and ambit of Section 65 of the Act. It will be open for the petitioners also to take note of the situation that since last 12 years the petitioners are fully cultivating the land in question and that may also be considered by the Deputy Collector while passing the final order.

8. For the reasons stated hereinabove, the impugned order passed by the Deputy Collector dated 5.12.2003 is hereby quashed and set aside. The matter is remanded to the Deputy Collector, Palanpur for taking a fresh decision under Section 65 of the Act considering the observations made by this Court hereinabove. The Deputy Collector is directed to consider and give a specific finding on inquiry that the lands have remained uncultivated/Padtar due to reasons beyond control of the petitioner or not. While passing the final order, the Deputy Collector, Palanpur, may also consider the fact that since last 12 years the land is fully cultivated and the allegation with regard to non-cultivation was for the years 1982-83 to 1989-90. Such an exercise is required to be done by the Deputy Collector within a period of four months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.